

INDEPENDENT EXAMINATION OF THE BLACKFORDBY

NEIGHBOURHOOD DEVELOPMENT PLAN

EXAMINER: Andrew S Freeman BSc (Hons) DipTP DipEM FRTPI

Mel Mitchell
Deputy Town Clerk
Ashby de la Zouch Town Council

Ian Nelson
North West Leicestershire District Council

Examination Ref: 01/AF/BNP

15 November 2021

Dear Ms Mitchell and Mr Nelson

BLACKFORDBY NEIGHBOURHOOD PLAN EXAMINATION

Following the submission of the Blackfordby Neighbourhood Plan (the Plan) for examination, I would like to clarify several initial procedural matters. I also have a number of questions for Ashby de la Zouch Town Council (the Qualifying Body) and North West Leicestershire District Council, to which I would like to receive a written response(s) by **Monday 29 November 2021**.

1. Examination Documentation

I can confirm that I am satisfied that I have received a complete submission of the draft Plan and accompanying documentation, including the Basic Conditions Statement; the Consultation Statement and Appendices; the Strategic Environmental Assessment and Habitat Regulations Assessment Screening Determination Report; and the Regulation 16 representations, to enable me to undertake the examination.

Subject to my detailed assessment of the draft Plan, I have not at this initial stage identified any very significant and obvious flaws in the Plan that might lead me to advise that the examination should not proceed.

2. Site Visit

I will aim to carry out a site visit to the neighbourhood plan area in the week beginning 6 December 2021. The site visit will assist in my assessment of the draft Plan, including the issues identified in the representations.

The visit will be undertaken unaccompanied. It is very important that I am not approached to discuss any aspects of the Plan or the neighbourhood area, as this may be perceived to prejudice my independence and risk compromising the fairness of the examination process.

I may have some additional questions, following my site visit, which I will set out in writing should I require any further clarification.

3. Written Representations

At this stage, I consider the examination can be conducted solely by the written representations procedure, without the need for a hearing. However, I will reserve the option to convene a hearing

should a matter(s) come to light where I consider that a hearing is necessary to ensure the adequate examination of an issue, or to ensure that a person has a fair chance to put a case.

4. Further Clarification

From my initial assessment of the Plan and supporting documents, I have identified a number of matters where I require some additional information from the Town Council and District Council, which I have set out in the Annex to this letter. I would be grateful if you can seek to provide a written response(s) by **Monday 29 November 2021**.

5. Examination Timetable

As you will be aware, the intention is to examine the Plan (including conduct of the site visit) with a view to providing a draft report (for 'fact checking') within 4-6 weeks of submission of the draft Plan. However, as I have raised questions, I must provide you with sufficient opportunity to reply. Consequentially, the examination timetable will be extended. Please be assured that I will aim to mitigate any delay as far as is practicable. The IPE office team will seek to keep you updated on the anticipated delivery date of the draft report.

If the Town Council or Local Planning Authority have any process questions related to the conduct of the examination, which you would like me to address, please do not hesitate to contact the office team in the first instance.

In the interests of transparency, may I prevail upon you to ensure that a copy of this letter and any subsequent response is placed on the Town Council and North West Leicestershire District Council's websites.

Thank you in advance for your assistance.

Your sincerely

Andrew Freeman

Examiner

ANNEX

From my initial reading of the Blackfordby Neighbourhood Plan and the supporting evidence, I have the following questions for Ashby de la Zouch Town Council and North West Leicestershire District Council. I have requested the submission of responses by **Monday 29 November 2021**, although an earlier response would be much appreciated.

Questions for Ashby de la Zouch Town Council

1. Natural England's Regulation 16 response seems to imply that Natural England has not seen the HRA Screening Opinion (and may not have seen the full SEA/Environment Report prepared for the Town Council by AECOM). I would wish to see Natural England's comments regarding both matters. Please comment.

Natural England were consulted on the HRA in 2019 and they advised that they did not agree with the conclusion that there would be no likely significant adverse effects upon the River Mease SAC. It was for this reason that NWLDC advised carrying out an SEA. The letter from Natural England is attached (dated 5 July 2019). In terms of the SEA that was made available as part of the consultation on the District Council's website. NWLDC did go back to Natural England after the consultation on this matter but did not get a response. Again attached (email dated 11 October 2021).

2. The Consultation Statement does not contain a summary of main issues and concerns from the Regulation 14 stage. Please prepare some notes to satisfy this requirement.

Please find attached responses from the Regulation 14 stage.

3. Policy G2: Please comment on the representations of the National Forest Company, Natural England and Severn Trent.

NFC – We are content for the policies to be amended as requested.

NE – We are content for policy G2 to be amended as requested.

ST - We consider that the policy amendments requested by Severn Trent go into too much detail and are not required in the NP. For example, policy ENV1 already allows development which does not have an adverse impact on the LGS ... adding in specific reference to the development of flood resilience schemes is already provided for in the general policy wording. We consider that if these additional requirements are included in the policies, it will present an unbalanced and disproportionate weighting towards water-related issues.

4. Policy G2 a) – reference to any wider landscape views: Are these the views protected under Policy ENV 7? If not, how will an applicant know what are the qualifying views?

It does refer to the views identified in Env 7 and the policy can be amended to state this.

5. Policy G2 b): Is more than one charging point per dwelling envisaged?

One would be sufficient. This can be reconsidered on review of the NP

6. Policy G2 c): Please explain the thinking behind the preservation of elevations on biodiversity grounds?

This refers to the desire to retain existing topography (natural features of an area) wherever possible.

7. Policy G2 e): Please provide links or other means by which details of the River Merse SAC, the Water Quality Management Plan and the Developer Contribution Scheme can be sourced by applicants? How is it envisaged that the phasing of development will be brought about?

https://www.nwleics.gov.uk/pages/developments_within_the_catchment_area_of_the_river_mease_special_area_of_conservation

On the question of phasing of development, this will require either the development of a third Development Contribution Scheme (DCS3) or pumping out of catchment, as there is currently no capacity left within DCS2. In terms of pumping out, this will not now occur until 2027, whilst work on a potential DCS3 has started but it would be likely to be mid-2022 before this could be in place. The policy could be reworded to state:

“The phasing of the development must take into account, where appropriate, the need to provide water quality improvements through developer contributions to ensure that there will be no adverse impact, directly or indirectly, on the integrity of the River Mease Special Area of Conservation. Therefore, development will not be allowed to take place until whichever is the sooner of the following:

- Additional capacity being available through a further Developer Contribution Scheme or;
- Pumping out of catchment having taken place.”

8. Policy G2 f): Is it envisaged that *all* development would incorporate sustainable drainage schemes? What is meant by “the ecosystem service”?

It would relate to development ‘where appropriate’. Ecosystem service should say just ecosystem.

9. Policy G2 h): Please respond to the comments of North West Leicestershire District Council and Gladman.

We are content for the need for building regulations standard M2 to be an aspiration rather than a requirement and for the policy to say ‘should’ rather than ‘will’.

10. Policy G2 i): Where is an applicant to find details of best practice on the biodiversity aspects of roof and wall construction? What are the “curfew hours” and is it realistic for sports lighting and the like to be switched off at such times? Is it realistic for light spillage in bat foraging corridors to be limited to 1 Lux? Are bat foraging corridors identified anywhere?

The intention of the policy is that applicants are expected to submit proposals that demonstrate an intention to comply with best practice and to understand technical standards for biodiversity in new building, e.g., 'Designing for biodiversity: A technical guide for new and existing buildings' (RIBA Publishing 2013, 2nd edition). The short reference for the bat lighting rationale is in the policy - LRERC = Leicestershire and Rutland Environmental records Centre - Bats and Lighting https://www.leicestershire.gov.uk/sites/default/files/field/pdf/2016/8/22/LRERC_Bats_lighting.pdf (leicestershire.gov.uk).

11. Policy H1: Please comment on the representations of the National Forest Company. Please clarify by specific reference to the NPPF what is envisaged under “environmental net gain” (also in Policy ENV 2). Are the “important existing landscape features” (other than those mentioned in the policy) identified anywhere? What is the “identified important view” in Figure 12?

The view was removed from figure 12 due to the conflict with policy H1.

The NPPF states in paras 32, 174 (d), 179 (b) and 180 (d) that net gains for biodiversity should be achieved. The need for net gains in environmental objectives is specifically sought in para 32. The reference to achieving an 'environmental net gain' was included in the NP as a direct consequence of the Environmental report which recommended its inclusion (see Consultation Statement Appendix 13).

Protecting important landscape features was added in as it was a direct recommendation of the Environmental report (see Appendix 13 of the Consultation Statement) and are not mentioned elsewhere in the NP.

12. Policy H2: What is the thinking behind the need for a viability assessment?

This is to promote the inclusion of bungalows if financially viable.

13. Policy H3: Are there likely to be windfall opportunities other than through infilling or redevelopment?

No. This reference can be removed if felt appropriate to do so. It is included to help identify the windfall opportunities that will arise.

14. Policy H3 d): Should the amenities of the occupiers of the host property be protected?

Yes, this can be included if felt appropriate.

15. Policy H4: Please respond to the comments of North West Leicestershire District Council. Would *all* affordable housing be first offered to households who meet the criteria or just a proportion?

We disagree with the judgement of NWLDC. The policy says that affordable housing should be allocated to people with a local connection 'where possible'. We cannot see how this means, as stated by NWLDC, that 'people in housing need who come from places with no/limited new development would never have their needs met'. Local connection policies have routinely been included in neighbourhood plans (see Medbourne, Saddington, Great Easton, East Langton, South Kilworth, Ryton on Dunsmore, Waltham on the Wolds and Thorpe Arnold, Quorn and Ellistown and Battleflat, which is in NWLDC and was not mentioned in the NWLDC response.

If it makes it more acceptable for the LPA, making the dwellings available to people with a local connection can be limited to 50% of housing.

16. Policy ENV 1: Please respond to the comments of North West Leicestershire District Council. Please identify any spaces where owners have not been consulted about designation/where objections have been raised (with details).

a) NWLDC say they are unclear what 'exceptional circumstances' means and that it should be stated what this means.

This matter was addressed by the Examiner of the Ellistown NP who said 'In the Regulation 16 response, NWLDC sought clarification of what would constitute "very special circumstances", the phrase used in Policy NE1. Paragraph 78 of NPPF states that the policy for managing development within a LGS should be consistent with policy for Green Belts, which uses the same phrase in paragraph 87. Such "very special circumstances" are not generally defined and can only be judged on a case by case basis'. Furthermore, Local Plan para 6.11 and policy En3 (3) refers to 'exceptional circumstances' without defining them.

The omitted candidate LGS – [Note (reference to 'sites'): only one site scores 18/25 but is not included]. PPG paragraph: 013 Reference ID: 37-013-20140306 states 'whether to designate [as LGS] is a matter for local discretion'. There was no appetite locally to designate site 020; thus, although it meets most of the NPPF 2019 para 100 criteria it is not 'demonstrably special to a local community' and so does not satisfy this 'essential' criterion.

We are not aware of any owners that were not contacted or that objected.

- 17. Policy ENV 2:** On Figure 6, what is the significance of the elongated tan coloured parcels that are unreferenced; also, the unnumbered parcels in the lighter green colour?

Please refer to the caption to Figure 6 where the colours are keyed: brown = historical environment sites; bright green = Local Wildlife Sites

- 18. Policy ENV 4:** Please respond to the comments of North West Leicestershire District Council and Gladman.

NWLDC: We are content for these changes to be made

Gladman: the phrase 'wherever possible' supports the enhancement of the assets as appropriate.

We are content for the policy to refer to the need for the benefits of a development proposal needing to be balanced against the significance of the heritage asset and any harm that would result from the development.

- 19. Policy ENV 5:** Please respond to the comments of North West Leicestershire District Council.

(p.35): these maps show the historic distribution of R&F to illustrate the amount and rate of loss revealed by the new survey undertaken for the NP

(ENV5): Identification of NDHAs in a NP, subject to there being no site-specific objections during consultation and following validation by the Authority maintaining the local Historic Environment Record (Leicestershire CC in this case), leads automatically to inclusion as heritage assets in the HER. [note: the reference to NPPF para 135 in the narrative text should now be 203 (NPPF2021)]

- 20. Policy ENV 6 – locally significant habitats and species:** Are these identified somewhere?

The intention of Policy ENV 6 is a general policy to require all development proposals (irrespective of their location in relation to the sites identified in policy ENV2, figure 6, natural environment sites) to identify current the biodiversity value (i.e. 'significant habitats and species') of the proposed site and its boundaries. [The requirements for net biodiversity gain in NPPF 2021 will now apply]

- 21. Policy ENV 7 on River Mease SAC:** Is there any particular reason why this statement of support is included as a policy?

We are content for it to be moved to a supporting statement.

- 22. Policy ENV 7 on Protection of Important Views:** Please respond to the comments of North West Leicestershire District Council.

The short descriptions (listed with ENV 7) and photos are routinely acceptable as sufficient justification/evidence for policies on views and are considered sufficient. If a proposal impacted on any of the listed views, an applicant would need to demonstrate how the development impacted on the view and what mitigation was proposed to avoid harm. NWLDC are seeking a higher level of prescription than is considered necessary.

- 23. Policy ENV 9:** Please respond to the comments of North West Leicestershire District Council and Heatons.

NWLDC- we are content for the reference to the impact assessment to refer only to turbines. Net landscape quality can be judged in the same way that biodiversity net gain is measured. Heaton – Blackfordby and Woodville are separate settlements in the opinion of the Qualifying Body irrespective of whether they are in the same parish. Whilst it is true that the area is outside of the limits to development it is felt important locally to reinforce this continued separation.

24. Policy CFA1: Is this policy intended to apply to *all* the facilities identified in Section D?

Yes. We are content for them to be named in the policy.

25. Policy BE1: Please respond to the comments of North West Leicestershire District Council.

We are content for this updated Use Classes Order to be referenced in the policy. We are also content for the period without occupation to be reduced to 6 months. It is intended that this runs in parallel rather than consecutively.

26. Policy BE2: Please respond to the comments of North West Leicestershire District Council.

Yes, all the criteria are required to be met and this is explicitly stated in the policy by the use of 'and' after the penultimate criteria. This is a standard form of referencing.

27. Policy BE2 – “well integrated into and complementing existing businesses”: How does the Town Council envisage that this will be determined?

It means in keeping with businesses in the locality.

28. Policy BE4: Please comment on the representations of the National Forest Company.

We are content for these amendments to be made.

29. Policy BE5: To qualify for policy support, is it necessary for access or improvements to be provided to *all* businesses and households (as opposed to businesses and households in general)?

It is not necessary for improvements to be provided to all businesses, though desirable.

30. Policy TR1: Please respond to the comments of North West Leicestershire District Council. Are “key village facilities” identified anywhere?

Yes, all the criteria are required to be met and this is explicitly stated in the policy by the use of 'and' after the penultimate criteria.

The key village facilities are those listed in the narrative preceding policy CFA1

31. Policy TR3: Would it be better to require provision of an electric vehicle charging point rather than to specify a particular type of electricity supply?

The issue here is that 7KW cabling enables fast charging. Not referencing the type of supply would enable an ordinary socket to be supplied which would not facilitate the overnight charging required.

Question for Ashby de la Zouch Town Council and North West Leicestershire District Council

32. A revised version of the National Planning Policy Framework was published by the government on 20 July 2021 alongside a final version of the National Model Design Code. I

would be grateful if you could please advise me whether you consider any modifications in relation to the non-strategic matters covered by the draft Blackfordby Neighbourhood Plan are necessary as a result of the publications (other than amended referencing) and, if so, what these are?

There are some areas where a modification might be appropriate, though they are very minor and in fairness would add very little to the plan. Possible amendments are:

- Policy H1 - Could make reference in supporting text at paragraph 4.28 to the proposed allocation according with NPPF paragraph 70 as it is a small/medium site
- Policy TR1 – Could amend policy TR1 (e) to state “Consider, where appropriate, the improvement and where possible the creation of attractive, well-designed footpaths and cycleways to key village facilities; and “so as to be entirely consistent with NPPF.
- Policy ENV3 – could amend to state “The following sites are of high value for sport, recreation, amenity, tranquillity, nature or as green spaces within the built-up area.”
- Policy G2 - could say after first paragraph that “New development which fails to reflect the following will not be supported” (or will be refused) as this would strengthen it to accord with NPPF. In addition, could also include reference to beautiful place and buildings. For example, “All development should be beautiful and sustainable whilst continuing to reflect the character and historic context of existing developments in Blackfordby”. Also, could amend G2(c) to state “Development should be enhanced by landscaping with existing trees, elevations and hedges preserved whenever possible to promote and improve biodiversity” again to be entirely consistent with the NPPF.